

ARKANSAS SUPREME COURT

No. CR 06-475

NOT DESIGNATED FOR PUBLICATION

PATRICK TROWBRIDGE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 21, 2006

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
BOONE COUNTY, CR 2002-348, HON.
JOHNNY RAY PUTMAN, JUDGE]

MOTION GRANTED

PER CURIAM

A judgment and commitment order entered June 8, 2004, reflects that petitioner Patrick Trowbridge entered pleas of guilty to first-degree murder and kidnapping and received an aggregate sentence of 660 months' imprisonment in the Arkansas Department of Correction. Petitioner timely filed a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by order entered November 21, 2005. Petitioner tendered a partial record to this court, and brought this motion requesting belated appeal of that order. We remanded to the trial court for findings of fact and issued a writ of *certiorari* for the complete record. *Trowbridge v. State*, CR 06-475 (Ark. June 1, 2006) (*per curiam*).

The writ has now been returned. The trial court issued an order with findings as requested. As we noted in our original opinion of June 1, 2006, there was a reference in the Rule 37.1 petition to a hearing held on the petition, but it was unclear whether a decision was entered prior to the

November 21, 2005, order. The trial court found that no ruling was made on petitioner's Rule 37.1 petition at the hearing on the petition, and no notice of appeal was timely filed from the November 21, 2005, order. The trial court further found that Ms. Linda Woodworth was appointed to represent petitioner in his Rule 37.1 proceedings, was aware that petitioner desired to appeal the denial of his Rule 37.1 petition, and was not permitted to withdraw as counsel. The trial court found that Ms. Woodworth did not appeal the denial of the Rule 37.1 petition because she did not feel qualified to do a criminal appeal, having never done such an appeal.

Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal provides that trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. *See Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2002). Rule 16 applies to appeals from adverse orders in proceedings under Rule 37.1. *Johnson v. State*, 362 Ark. ___, ___ S.W.3d ___ (May 26, 2005) (*per curiam*) (citing *Miller v. State*, 299 Ark. 548, 775 S.W.2d 79 (1989) (*per curiam*)). It is well settled that under no circumstances may an attorney who has not been relieved by the court abandon an appeal. *Rogers v. State*, 353 Ark. 359, 107 S.W.3d 166 (2003) (*per curiam*). Here, Ms. Woodworth was still obligated to represent petitioner when she failed to timely file a notice of appeal.

Relief from failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Where it is plain from the motion, affidavits, and record that relief is proper under the Ark. R. App. P.--Crim. 2(e), based upon error or good reason, this court will grant a belated appeal. *Id.* When a criminal defendant requests a belated appeal, good reason is established where the defendant is not at fault,

and his or her attorney has failed to file a timely notice of appeal. *Williams v. State*, ___ Ark. ___, ___ S.W.3d ___ (June 15, 2006) (*per curiam*).

Petitioner is not at fault under the circumstances presented here, and Ms. Woodworth failed to timely file notice of appeal although she remains obligated to represent petitioner and perfect the appeal. In *McDonald*, this court held that we would no longer require an affidavit by an attorney admitting fault before we would consider a motion for belated appeal. Where, as here, there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. We direct our clerk that the appeal will proceed. The record will now be filed and a briefing schedule set.

Motion granted.